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Supreme Court, U.S.
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No. 79-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

COMMITTEE TO ELECT LYNDON LAROUCHE, NATIONAL CAUCUS OF LABOR COMMITTEES, CAMPAIGNER PUBLICATIONS, INC. and NEW SOLIDARITY INTERNATIONAL PRESS SERVICE,

Petitioners,

v.

FEDERAL ELECTION COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

The Committee to Elect Lyndon LaRouche, the 1976 principal campaign committee of Lyndon LaRouche; the National Caucus of Labor Committees, a national political and educational organization; Campaigner Publications, Inc., and New Solidarity International Press Service, Inc., businesses incorporated and doing business in the state of New York; pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on August 23, 1979.

OPINIONS BELOW

The opinion of the United States District Court is unreported and is set forth in the Appendix. The opinion of the United States Circuit Court of Appeals is not yet reported and is set forth in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on August 23, 1979. The petition for writ of certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

QUESTIONS PRESENTED

1. Did the Court below err in permitting the FEC to enforce subpoenas against Appellants in the District Court for the District of Washington, D.C.?
2. Did the Court below err in refusing to allow the Appellants and their attorney more than one day to prepare for the hearing, and in finding an unintentional waiver of their Constitutional rights from the form of words in which they requested an opportu-

nity to show that the FEC issued the subpoenas against them from malice and in bad faith?

CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are relevant to the questions presented.

ARTICLE III
Section 2

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to Controversies between two or more states;—between a State and Citizens of another State;—between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

AMENDMENT I

Congress shall make no law respecting an establishment of religion or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

PROVISIONS OF THE UNITED STATES CODE

The following provisions of the United States Code are relevant to the questions presented.

2 U.S.C. 437(d). Powers of Commission.

(a) The Commission has the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 313(a)(9)), or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954, through its general counsel;

(7) to render advisory opinions under section 312 of this title;

(8) to develop such prescribed forms and to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, United States Code, as are necessary to carry out the provisions of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954;

(9) to formulate general policy with respect to the administration of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954; and

(10) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena

or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) (1) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) Except as provided in section 313(a)(9), the power of the Commission to initiate civil actions under subsection (a)(6) shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

15 U.S.C. Section 49. Documentary evidence, depositions; witnesses

For the purposes of this Act, the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the commission shall have the power to require by subpoena the attendance and testimony of

witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership or corporation, issue an order requiring such person, partnership, or corporation to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as contempt thereof.

STATEMENT OF THE CASE

This is a Petition for Certiorari, taken from an Opinion and Order of the United States Circuit Court of Appeals for the District of Columbia, dated August 23, 1979, affirming the order of the District Court directing Petitioners to comply with subpoenas served on them by the Federal Election Commission (hereinafter "FEC").

The Petitioners are the Committee to Elect Lyndon LaRouche ("CTEL"), a principal campaign committee registered with the FEC with offices in New York, New York; the National Caucus of Labor Committees ("NCLC"), an unincorporated political and educational organization with national headquarters in New York, New York; Campaigner Publications, Inc. ("Campaigner"), a publishing company incorporated and doing business in New York, New York; and New Solidarity International Press Service, Inc. ("NSIPS"), which is incorporated and doing business in New York, New York.

CTEL was formed in October, 1975 to support the bid of Lyndon LaRouche for the Presidential nomination of the U.S. Labor Party for the 1976 election. It registered with the FEC at that time and filed regular reports as required by law. During the period October 1975 through October 1976 CTEL engaged in various business transactions with Campaigner and NSIPS in connection with its campaign activities. CTEL, during the same period, also engaged in certain business transactions with NCLC. Neither Campaigner nor NSIPS had any dealings with CTEL outside the state of New York. Campaigner, NSIPS, and NCLC had no connection with the FEC whatsoever during the entire period.

On August 23, 1977, the FEC petitioned the United States District Court for the District of Columbia for enforcement, under 2 U.S.C. section 437d(b), of subpoenas which it had issued to Petitioners. That statute authorizes any United States District Court "within the jurisdiction of which any inquiry is carried on" to order compliance with an FEC subpoena. September 8, 1977 was set as the date for oral argument. The order was not served on any of the Petitioners until September 7, 1977, one day before the hearing. On that same day, September 7, 1977, counsel for Respondents filed a motion to dismiss for lack of jurisdiction, failure to serve one of the Petitioners, and inadequate time to prepare a defense.

At the hearing on September 8, 1977, counsel for Petitioners urged that the subpoenas were issued improperly because they constituted harassment and retaliation for two pending lawsuits filed by CTEL against the FEC. Counsel for Petitioners twice requested the Court's permission to file a written memorandum. The Court refused, stating he would probably rule on the papers before him, but that he would let counsel know.

On September 26, 1977 the District Court issued a Memorandum Order, without permitting counsel to file any additional papers, directing Petitioners to comply with the FEC's subpoenas.

On September 28, 1977, Petitioners filed a notice of appeal, and on September 29, 1977, a motion for a stay pending appeal. The District Court denied the motion for a stay pending appeal on October 18, 1977.

On November 3, 1977, Petitioners filed a motion for a stay pending appeal in the Court of Appeals. The Court of Appeals denied the motion for a stay pending appeal on November 8, 1977. Thereafter, on November 14, and for several days following, Petitioners produced to the FEC materials requested in the subpoenas.

ARGUMENT
THE COURT COMMITTED PLAIN ERROR IN HOLDING THAT THE SUBPOENAS WERE PROPERLY ENFORCED IN WASHINGTON, D.C.

Ever since the Declaration of Independence, which listed as one of the outstanding grievances which the colonists held against the British Crown, that it held court in inconvenient places, one element of due process has been that the forum of civil proceedings be one which visits no inequity upon the defendant. This is even more the case when the government is the party Plaintiff. The Court below recognized this in the abstract, and in the statutory form in which it has become embodied. Slip Opinion at 8 *et seq*. Yet, the court utilized specious reasoning to lend its imprimatur to a situation where the Defendants are forced to contest a subpoena in a district where they have no office, no records, no presence, and at present, no attorney. The reasoning was as follows. First the Court analogized the investigation at bar to several investigations undertaken by the Federal Trade Commission ("FTC"). Even in such cases, the Court adduced authority to the effect that the FTC is bound by a rule of reason. Slip Opinion at 11. The Court then

discussed a series of cases involving investigations of multi-million dollar corporations, and multi-hundred million dollar corporations, and decreed, by analogy, that since such corporations could be made to answer subpoenas in Washington, so could the CTEL, and the several small businesses that extended it credit, none of which were much larger than the proverbial "Mom and Pop" stores. This blithe comparison of elephants and rabbits, whatever else it is, is not coherent with a rule of reason.

The Court then adduced another reason why the FEC's inquiry was properly enforced in Washington. The reason in stark terms, is because the FEC is in Washington. See Slip Opinion at 15-16. That the FEC would make determinations in Washington is not surprising. Why that fact should make the FEC's offices the center of the inquiry in question does not appear, save by mere assertion. This is the method that the Court below utilizes. The Court applied this rule of law mechanically, without the slightest sensitivity that it was dealing with, not a multi-national corporation, but the smallest, least well-financed political committees over which FEC has ever exercised jurisdiction, and a handful of tiny businesses. When the Court recalls that this case does not involve economic regulation, but rather an inquiry which was directed at a political association, and the few businesses willing to extend it credit to field a third-party candidate the unfairness of the Circuit Court's mechanistic application of cases involving the FTC appears in stark relief. The bureaucratic insensitivity of the FEC was adopted wholeheartedly by the Court below. While such blind acceptance of the dictates of an administrative agency is unfortunate in any case, where that agency attempts to extend its reach into the areas of the First Amendment, such a ruling is itself improper and must be reversed.

The Court of Appeals makes much of its assertion that the FEC's choice of Washington, D.C. as its forum was within the "bound of reasonableness." Slip Opinion at ll. However, its reliance on the cases cited is quite misplaced.

In *FTC v. MacArthur*, 532 F. 2d 1135 (7th Cir. 1976) the question of the "bound of reasonableness" concerned whether or not the place in which enforcement of subpoenas was sought had a reasonable relationship to the subject matter of the investigation. Since the headquarters of the corporation in question was in Chicago, and the FTC's inquiry was being conducted there, the court held that enforcement of subpoenas in the Northern District of Illinois met the test of reasonableness—even though some of the documents and witnesses sought were located in Florida. In the case at bar all documents and all witnesses are physically located in New York, and the production of documents and witnesses was requested and took place in New York; reasonably the enforcement action should have been brought there as well.

The only reason for locating the enforcement action in Washington was for the convenience of the FEC. However, convenience of the agency is *not* sufficient grounds to locate a judicial enforcement action in a particular district. *FTC v. Western General Dairies, Inc.*, 432 F. Supp. 31 (N.D. Cal. 1977). The Court of Appeals herein held that "inasmuch as the instant case involves a nationwide investigation, *Western General* is inapposite." However, to argue this the Court below had to transform the FEC's investigation of Petitioners into a "nationwide" investigation. Yet all of the organizations and individuals subpoenaed were located in New York, as were all the documents. Not a single witness or document which is the subject of the instant subpoenas is outside of New York.

It is most telling, however, to actually review the leading case on which the "bound of reasonableness" test is based. This is *United States v. Morton Salt Co.*, 338 U.S. 632, 652-653, 70 S. Ct. 357, 368-369, 94 L.Ed. 401, 415-416 (1949). (This is the citation which is omitted in the quotation from *FTC v. MacArthur, supra*, Slip Opinion at 11.) The reference in *MacArthur* is to *Morton Salt*'s discussion of constitutional rights as applied to corporations which are the subject of government regulation.

Briefly, what was at issue in the *Morton Salt* case was whether the government could compel corporations which were the subject of a cease-and-desist order to file compliance reports with the FTC. The question was whether *disclosure* was reasonable or unreasonable—that is, was the information sought by the FTC within the scope of a regulatory investigation? In its discussion of the 4th and 5th Amendment rights of a large corporation, the *Morton Salt* court argued that corporations which are the recipients of favors from the government, "can claim no equality with individuals in the enjoyment of a right to privacy." *Ibid.* at 652. This was the context in which the test of reasonableness was formulated. The distinctions between a large corporation subject to FTC regulation, and political entities and small businesses which have already alleged major invasion of their First Amendment rights and electoral campaign by the regulatory agency involved, the FEC, are striking. In this light, the alleged "reasonableness" of the FEC's choice of a Washington, D.C. forum to enforce its subpoenas against New York individuals and organizations quickly fades away.

The most elementary elements of due process are notice and hearing. It ought to go without saying that the notice must be reasonable, that is, of the sort calculated to give the party affected a fair opportunity to participate in the hearing, and the hearing itself must afford the party at least a minimal opportunity to participate therein. It is uncontested, and the Court below acknowledged, that the parties were only served a few short days before the hearing, and the attorney retained the day before. The court makes much of "actual notice," Slip Opinion at 29, footnote 20. Such notice is meaningless. That a party has knowledge of a proceeding against it, without counsel, without the papers which are to be used against it or knowledge of the grounds relied upon by its adversary, is meaningless knowledge. That is the reason why the FRCP has a Rule 4, which does not permit a Court to proceed on actual notice as opposed to proper service. That a party had this philosopher's stone of actual notice does

not transfer all of that party's knowledge to an attorney, who also has not had the advantage of seeing the government's papers, and the time to respond to them. Yet, the Court below permitted and affirmed that the District Court go ahead with a hearing, although the government was not at all prejudiced by a slight delay to allow Defendants' lawyer to prepare.

The Court below then proceeded to *infer a waiver* of all the Defendants' legal rights from the fact that their attorney, *on one day's preparation*, only requested the right to make a further submission to show bad faith on the part of the FEC, but did not chant the formula-words of "evidentiary" showing. The Court below knows well that the law is loathe to imply a waiver of basic Constitutional rights. Cf. Slip Opinion at 28 and 30, footnote 21. Yet, in this ludicrous hearing, conducted by an unprepared attorney, who barely had time to confer with his clients, but who was alert enough to the issues, nonetheless, to call the Court's attention *specifically* to the matter that he wanted to prepare and demonstrate, Slip Opinion at 28-29, the court caps the climax by holding, as a matter of law that the attorney's request was no request (Slip Opinion at 30); that his charges were unsubstantiated (because he was denied any opportunity to substantiate them, however true they were and are in fact); and that therefore, his clients, hundreds of miles away, served with papers one day before, never having conferred at length with their attorney, had *waived their most basic Constitutional rights: those of due process and equal protection of the laws.* On what reasoned basis was this precedent-setting, and unparalleled reversal of every concept of Constitutional law set by this Court for the past one hundred years and more, undertaken? A mere *Ipse Dixit* and nothing more. See Slip Opinion at 30-31. With all due respect to the Court below, this proceeding had the characteristics of the Star Chamber. A lawyer's plain request for time to prepare and demonstrate prejudice against his clients by a runaway, politically motivated agency was denied, where his request at a hearing was

labeled a waiver because he did not say "discovery" and "evidentiary" when he asked to supplement the record. His client's rights, thus waived for them (and was there ever a less "intelligent and informed" waiver allowed since the salad days of the Spanish Inquisition?) were then dismissed as "unsubstantiated," and their papers summarily opened to the agency. Especially considering that the Petitioners before this Court are—with the exception of CTEL—not political organizations, but merely small businesses whose uttermost offense was to do business with a candidate that the FEC wanted to destroy, the ruling of the Court below returns us to the days of the General Warrant, and nullifies the effect of the Constitution for these parties. This Court should note the effect of such a precedent upon the FEC and other administrative agencies. The question is whether the Court will be faced with reversing this precedent at another's instigation, thus doing a deep injustice to the Petitioners at bar, or enforcing these colonial measures against persons and businesses of whatever political persuasion, who fall afoul of a politically-motivated and malevolent agency such as the FEC has demonstrated itself to be in the case of petitioners.

CONCLUSION

The Court should grant Certiorari, and reverse the decision of the Courts below.

Respectfully Submitted,

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APPENDIX

ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FEDERAL ELECTION COMMISSION,

Petitioner,

v. *MISC. NO. 77-0190*

COMMITTEE TO ELECT LYNDON LaROUCHE, UNITED STATES LABOR PARTY, NATIONAL CAUCUS OF LABOR COMMITTEES, NEW SOLIDARITY INTERNATIONAL PRESS SERVICE, INC., and CAMPAIGNER PUBLICATIONS, INC.

Respondents.

ORDER TO SHOW CAUSE

The Federal Election Commission has filed an application for an Order requiring respondents, Committee to Elect Lyndon LaRouche by and through their agents including but not limited to Lyndon LaRouche, Lawrence Hecht, Marcia Merry Pepper, and Richard Welsh; United States Labor Party by and through their agents including but not limited to Richard Welsh and Lyndon LaRouche; National Caucus of Labor Committees by and through their agents including but not limited to Ellen Berg, Marjorie Mazel, and Nancy Spannaus; Campaigner Publications, Inc., by and through their agents including but not limited to Stephen Pepper, Ed Spannaus, and Nancy

Spannaus, to Show Cause why the subpoenas requiring respondents to answer certain questions and produce evidence should not be enforced. The subpoenas were served on the respondents on June 26 and June 27, 1977, pursuant to the Commission's authority under 2 U.S.C. 437d (a) (3).The respondents did not comply with the subpoenas and the Commission, therefore, on good cause, applied hereto.

IT IS HEREBY ORDERED:

That respondents appear before in *Motions Court, U.S. Courthouse, 3rd and Constitution Avenue, N.W., Washington, D.C.* with the records specified in said subpoenas on the *8th* day of *September, 1977 at 10:00 a.m.* Counsel may be heard and show cause why this court should not issue an Order directing the respondents to comply with the Commission's subpoenas.

FURTHER ORDERED that this Order shall be served upon respondents by the United States Marshal.

ORDERED this *23rd* day of *August, 1977.*

/s/U.S.D.J.

UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FEDERAL ELECTION COMMISSION

Petitioner

v. *Civil Action No.* _____

COMMITTEE TO ELECT LYNDON LA ROUCHE, UNITED STATES LABOR PARTY, NATIONAL CAUCUS OF LABOR COMMITTEES, NEW SOLIDARITY INTERNATIONAL PRESS SERVICE, INC., AND CAMPAIGNER PUBLICATIONS, INC.

Respondents

PETITION TO ENFORCE SUBPOENA OF THE FEDERAL ELECTION COMMISSION

1. This is an action for enforcement of a subpoena, issued pursuant to 2 U.S.C. §437(a) (3).

2. Jurisdiction is conferred upon this court by 2 U.S.C. §437d(b).

3. Petitioner is the agency of the Federal Government charged with the administration and enforcement of the Federal Election Campaign Act of 1971, as amended (P.L. 94-283). The Federal Election Commission is mandated to investigate possible violations of election laws (2 U.S.C. §431 through 2 U.S.C. §455) and to verify and certify eligibility to receive Presidential Election Campaign Funds (26 U.S.C. §9001 through 26 U.S.C. §9012) and Presidential Primary Matching Payments (26 U.S.C. §9031 through 26 U.S.C. §9042).

4. Respondents are corporations and unincorporated associations having headquarters in the state of New York and having offices in the city of New York. Both corporations are chartered in New York.

5. Pursuant to 2 U.S.C. §437g(a)(2) and on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities over Chapter 96 of the Internal Revenue Code of 1954 (26 U.S.C. § 9031 through 26 U.S.C. §9042), the petitioner on May 12, 1977, found Reason to Believe that violations of the following statutes had been committed by respondents, as set out:

a. National Caucus of Labor has violated:

(1) 2 U.S.C. §434 by failing to register and report with the Commission.

(2) 2 U.S.C. §441a by making excessive contributions in-kind to the Committee to Elect Lyndon LaRouche (hereinafter, CTEL) and the United States Labor Party (hereinafter, USLP).

(3) 2 U.S.C. §433(b) (2) by not registering as an affiliated committee with USLP and CTEL.

b. New Solidarity International Press Service, Inc., violated:

(1) 2 U.S.C. §441b by making illegal corporate contributions in-kind to USLP, CTEL, and the National Caucus of Labor Committees (hereinafter, NCLC), on behalf of the LaRouche Presidential campaign.

c. Campaigner Publications, Inc., has violated:

(1) 2 U.S.C. §441b by making illegal corporate contributions in-kind to USLP, CTEL, and NCLC on behalf of the LaRouche Presidential campaign.

d. Committee to Elect Lyndon LaRouche has violated:

(1) 26 U.S.C. §9042 by making false and misleading statements in reports and certifications and on audit reports.

(2) 2 U.S.C. §433(b) (2) by failing to report affiliation with USLP and NCLC.

e. U.S. Labor Party has violated:

(1) 2 U.S.C. §433(b)(2) by not reporting its affiliation with CTEL and NCLC.

6. Notification of the petitioner's determination was sent to respondents on May 13, 1977.

7. When no response was received from respondents, the petitioner sent follow-up letters to the respondents on June 9, 1977.

8. On June 26, and June 27, 1977, the petitioner served on the respondents subpoenas.

9. Respondents did not petition the Commission for a Motion to Quash or modify the subpoena pursuant to Commission Regulation §111.13(a) (11 CFR 111.13).

10. Respondents have not complied with the subpoenas of the Commission.

11. No prior applications have been made for the relief sought herein.

WHEREFORE, the Federal Election Commission prays:

(1) That an Order to Show Cause issue forthwith directing respondents to appear before this court on August 31, 1977, and to show cause, if there be any, why an Order should not be issued directing the respondents to comply with the subpoenas of the Federal Election Commission.

(2) That this court issue an order directing the respondents to comply with the subpoenas of the Federal Election Commission.

(3) The Federal Election Commission be granted such further relief as may be necessary and appropriate.

Respectfully submitted,

/s/William C. Oldaker
WILLIAM C. OLDAKER
General Counsel

/s/Charles N. Steele

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/s/Lester Scall
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MEMORANDUM IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL ELECTION COMMISSION,

Petitioner

v. *Civil Action No.* _____

COMMITTEE TO ELECT LYNDON LA ROUCHE, UNITED STATES LABOR PARTY, NATIONAL CAUCUS OF LABOR COMMITTEES, NEW SOLIDARITY INTERNATIONAL PRESS SERVICE, INC., AND CAMPAIGNER PUBLICATIONS, INC.

Respondents

BRIEF IN SUPPORT OF PETITION TO ENFORCE SUBPOENA OF THE FEDERAL ELECTION COMMISSION

STATEMENT OF CASE

This case is before the court on petition to enforce subpoenas of the Federal Election Commission. Jurisdiction of this court is invoked pursuant to 2 U.S.C. §437d(b).

The subpoenas were issued in connection with an enforcement investigation of the above-named parties based upon an analysis of information "ascertained in the normal course of carrying out [the Commission's] supervisory responsibilities" of verifying required reports submitted

to the Commission under Title 2 of the United States Code, or matching fund submissions under Chapter 26 of the United States Code. 2 U.S.C. §437g(a)(2).

Our analysis of the reports of Committee to Elect Lyndon LaRouche and the United States Labor Party suggests the need for further investigation of the factual issues arising from the apparent coordination of the respondents' activities with the presidential campaign of Lyndon LaRouche.

On October 14, 1976, Lyndon LaRouche, the presidential candidate of the United States Labor Party, submitted a request for presidential primary matching funds with the Federal Election Commission pursuant to 26 U.S.C. §9033. On October 28, 1976, Mr. LaRouche and his principal campaign committee, the Committee to Elect Lyndon LaRouche, (hereinafter referred to as CTEL) filed suit in this court for an Order directing the Federal Election Commission (hereinafter referred to as "FEC" or "the Commission") to immediately certify Mr. LaRouche's eligibility to the United States Treasury. In January 1977, the court denied the requested relief and dismissed the action without prejudice. *Committee to Elect Lyndon LaRouche, et al., v. Federal Election Commission*, U.S.D.C. D.C., Civil Action No. 76-2010.

Even at the time of dismissal of the initial action, the Commission had not received copies of instruments or other written verification of contributions to meet the threshold requirements of the statute. (26 U.S.C. § 9033). In expectation that such written documentation would be received, the Commission approved audit and contribution verification procedures.

On the basis of the audit and field investigations conducted by the Commission pursuant to 26 U.S.C. §9038, the Commission determined on February 10, 1977, that CTEL had not reached the matching fund threshold in verifiable contributions. No further audit work on the records of CTEL and the other organizations was performed pursuant to 26 U.S.C. §9038, counsel having advised the FEC that CTEL would not make the records

available and that the other organizations had indicated they would not consent.

On February 14, 1977, Lyndon LaRouche, CTEL and LeRoy Jones (a contributor), filed a petition for review of the Commission's denial of matching funds certification in the Court of Appeals. *Committee to Elect Lyndon LaRouche, et al., v. Federal Election Commission*, U.S.C.A., D.C. Cir., No. 77-1184, pursuant to 26 U.S.C. §9041 which enables that court to review any agency action made under the provisions of Chapter 26. On April 28, 1977, the same plaintiffs filed a damage suit for redress of alleged unconstitutional harassment and actions by agents of the Federal Election Commission in connection with the verification of the matching fund submission. This action is currently before the court. *Jones v. Unknown Agents of the Federal Election Commission*, U.S.D.C., D.C., Civil Action No. 77-0732.

On the basis of the information received during the audit and field investigation, the Commission found reason to believe that the Committee to Elect Lyndon LaRouche may have violated the Federal Election Campaign Act of 1971, as amended (hereinafter referred to as "the Act"). Letters of notification by certified mail were sent to the five (5) respondents on May 13, 1977. (See Attachment #1.) Respondents were afforded "a reasonable opportunity to demonstrate that no action should be taken against such person(s) by the Commission under this Act." 2 U.S.C. §437g(a)(2) and (4).

When respondents failed to respond, follow-up letters were sent to the respondents on June 9, 1977.[1] (See Attachment #2.).

On June 24, 1977, local counsel for respondents filed a Motion for a Temporary Restraining Order in this court in conjunction with *Jones v. Unknown Agents of the Federal Election Commission, supra.* Respondents' motion included the following request:

1. The National Caucus of Labor Committees' follow-up letter was returned due to an incorrect address.

> Plaintiffs further move that FEC and its agents be prevented from harassing, investigating, or contacting plaintiffs and auditing their books and records.

On June 28, 1977, at oral argument, Judge Robinson denied the Motion for a Temporary Restraining Order.[2]

On the same day as the Commission was served with the Motion for a Temporary Restraining Order, the Commission sent out subpoenas to produce documents and compel testimony pursuant to 2 U.S.C. §437d(a)(3). (See Attachment #3.) In deference to the claimed indigency of respondents, the Commission made the subpoenas returnable at the offices of CTEL in New York City, on July 8, 1977, for the production of documents and July 14 and 15, 1977, for the deposition.

Respondents applied to the Commission, through local counsel, for an extension of time in which to comply with the subpoenas in order to accumulate the materials and to retain counsel in New York City. (See Attachment #4.)

On July 7, 1977, the Commission denied the request and immediately notified the respondents by telephone and telegram of the denial, but rescheduled the compliance date for July 11, 1977. (See Attachment #5.)

The Commission then sent three (3) auditors and an attorney to New York City on July 11, 1977, to review the requested documents. At that time, New York counsel, Gregory Perrin, stated that the documents were not available for review at that time, but would be substantially ready for review in ten days' time. Counsel for the petitioner and respondents then stipulated to an extension of time until July 20, 1977. (See Attachment #6.)

On July 19, 1977, Mr. Perrin telephonically notified the Commission that his clients had decided not to comply with the subpoenas or honor the stipulation.

On July 20, 1977, the Commission received formal

2. In spite of this denial, respondents have raised the same issue as their rationale for refusal to comply with the FEC subpoenas. (See Attachment #7, discussed *infra*.)

notification of the respondents' breach of the stipulation. (See Attachment #7.)

ARGUMENT

THE COMMISSION HAS AUTHORITY TO ISSUE THE SUBPOENAS AND THE COURT HAS THE POWER AND JUSTIFICATION TO ENFORCE IT

The Federal Election Commission has broad authority to administer the Federal Election Campaign Act of 1971, as amended. The Commission's powers include the power to formulate general policy with respect to the administration of the Act (2 U.S.C. §437d(a)(9)), the power to make rules to carry out the provisions of the Act (2 U.S.C. §437d(a)(8), and the power to initiate civil actions to enforce the provisions of the Act (2 U.S.C. §437d(a)(6)). The Commission is given exclusive primary jurisdiction with respect to civil enforcement of the Act. 2 U.S.C. §437c(b)(1), §437d(e), and §437g.

Pursuant to its enforcement process, the Commission has specific statutory authority to conduct investigations to determine if candidates for federal office, among others, are committing violations of the federal election laws. Section 437g of Title 2, United States Code, provides in relevant part:

> (a) (2) The Commission upon receiving any complaint under paragraph (1), and if it has reason to believe that any person has committed a violation of this Act, or of Chapter 95 or Chapter 96 of the Internal Revenue Code of 1954, or, if the Commission, on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that such a violation has occurred, shall notify the person involved of such alleged violation and *shall make an investigation of such alleged violation* in accordance with the provisions of this section. (Emphasis added.)

The Commission, therefore, clearly has the authority to investigate information ascertained during its matching fund verification process which would give the Commission reason to believe the respondents may have violated federal election laws.

To support the Commission's investigatory power,[3] the Act authorizes the Commission to issue subpoenas to compel the submission of reports and answers to questions. Section 437d(a) of Title 2, United States Code, states that:

> The Commission has the power—
> (3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties.

The Supreme Court has held that orders and subpoenas of administrative agencies may be enforced where the investigation is within the authority of the agency, the order or subpoena is not too indefinite, and the information sought is reasonably relevant. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). See also, *EEOC v. University of New Mexico, Albuquerque, New Mexico*, 504 F.2d 1296 (10th Cir. 1976); 1 Davis, *Administrative Law Treatise*, §3.04-3.12 (West 1958 and Supp. 1970). Provided that the subpoena describes with sufficient specificity the evidence sought and is not framed in oppressive terms, it is entitled to enforcement, subject only to requirements that the agency is acting within the statutory authority of a general class of proceeding which it is empowered to conduct, that the agency's action is not arbitrary, and that the information sought is not "plainly incompetent or irrelevant to any lawful purpose."

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3. The Commission's order power is analogous to that of the Federal Trade Commission as set forth in 15 U.S.C. §§45 and 46, and this power has been broadly construed by the courts. See *United States v. Morton Salt*, 338 U.S. 632 (1950).

Endicott Johnson Corp. v. Perkins. 317 U.S. 501, 509 (1942); *SEC v. Vacuum Can Co.*, 157 F.2d 530 (7th Cir. 1946), cert. denied, 330 U.S. 820 (1947).

The subpoena in the present matter seeks information which is necessary and relevant to the Commission's investigation of the following issues: (1) affiliation between the Committee to Elect Lyndon LaRouche, the United States Labor Party, and National Caucus of Labor Committees; (2) corporate contributions from New Solidarity International Press, Inc., and Campaigner Publications, Inc.; and (3) false statements or material misrepresentations on the matching fund submissions of the Committee to Elect Lyndon LaRouche.

Respondents were notified of the purpose of the investigation several months prior to the issuance of the Commission's subpoena. The notification letters, as already noted, set forth the statutory provisions on which the Commission investigation is based and the general scope of the investigation, including a summary of the allegation. The information sought pursuant to the subpoena, as already noted, is relevant to determining whether respondents have, in fact, committed violations of the statutory provisions which they have been advised are in issue. Thus, the issuance of the subpoena is a reasonable and appropriate exercise of the Commission's statutory authority. See, *Isbrandsten-Moller Co., v. United States*, 300 U.S. 139 (1937); *Far East Conference v. Federal Maritime Commission*, 337 F.2d 146 (D.C. Cir. 1964), *cert. denied*, 379 U.S. 991 (1965).

In the event of a Commission decision to issue a subpoena, the respondents are allowed five (5) days after the date of the service to apply to the Commission to quash or modify the subpoena. (11 C.F.R. 111.13.)

Respondents did petition the Commission for an extension of time in which to comply with the subpoena. (See Attachment #4.) Although the request came within five days of receipt of the subpoenas, the Washington counsel who requested the extension specifically preserved all rights the respondents may have, which newly appointed

counsel may wish to exercise. Accordingly, the Commission did not review the request of respondents as a formal motion to quash the subpoenas pursuant to Commission Regulation 111.13, *supra*.

Since the Commission received no further motions from respondents within five days (or any time) of receipt of the subpoenas, respondents have waived their administrative remedy and this court may now enforce the subpoenas pursuant to 2 U.S.C. §437d(b).

Subpoena enforcement proceedings of the nature before the court are summary in nature. *Donaldson v. United States*, 400 U.S. 517, 528, (1971). As long as the rights of the parties summoned are protected and an adversary hearing made available, if requested, the court need not require the filing of a complaint followed by an answer and discovery under the Federal Rules of Civil Procedure. *Donaldson, supra*, 400 U.S. at 529; *United States v. McCarthy*, 514 F.2d 368, 373, 377 (3rd Cir. 1975). Therefore, the Commission's proper relief is to petition this court for an Order to Show Cause at a date and time certain why an order enforcing its subpoenas should not be issued.

CONCLUSION

The Commission is proceeding within its congressionally mandated authority in its investigation of the Committee to Elect Lyndon LaRouche, United States Labor Party, National Caucus of Labor Committees, New Solidarity International Press Service, Inc., and Campaigner Publications, Inc. The subpoenas issued by the Commission are clearly authorized and seek, within well established bounds, to compel the production of evidence and testimony in support of the investigation. The court has jurisdiction to enforce the subpoenas and may issue an Order to Show Cause why the subpoenas should not be enforced.

For reasons expressed herein, it is submitted that the Commission's petition to enforce the Federal Election

Commission's subpoenas should be granted, and an Order to Show Cause should be issued by the court.

Respectfully submitted,

/s/William C. Oldaker
WILLIAM C. OLDAKER
GENERAL COUNSEL

/s/Charles N. Steele
CHARLES N. STEELE
ASSOCIATE GENERAL
COUNSEL

/s/Lester Scall
LESTER SCALL
ASSISTANT GENERAL
COUNSEL

TRANSCRIPT OF HEARING

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Petitioner,

v. *77-0190*

COMMITTEE TO ELECT LYNDON LA ROUCHE, UNITED STATES LABOR PARTY, NATIONAL CAUCUS OF LABOR COMMITTEES, NEW SOLIDARITY INTERNATIONAL PRESS SERVICE, INC., AND CAMPAIGNER PUBLICATIONS, INC.

Respondents.

TRANSCRIPT OF PROCEEDINGS
Washington, D.C.
September 8, 1977

The above-entitled matter came on for hearing in open court at 10:00 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH
United States District Judge

APPEARANCES:

Counsel for the Petitioner:

BARBARA VAN GELDER, ESQ.
LESTER SCALL, ESQ.

Counsel for the Respondents:

JOEL JOSEPH, ESQ.

REGIS GRIFFY
OFFICIAL COURT REPORTER

[Tr. pp. 83-86]

THE COURT: Why didn't your people comply with the subpoenas when they were given the subpoenas in New York?

MR. JOSEPH: They didn't comply, Your Honor, for several reasons.

First of all, they felt the subpoenas were invalid as a matter of law.

THE COURT: Tell me why.

MR. JOSEPH: Okay. As stated in the petition, letters were sent to respondents stating that they had reason to believe that the violations of the law were taking place. They did not put in their petition that responses were forthcoming. I have in front of me, which I can submit to the Court, a letter that I submitted on behalf of two of the respondents. At that time I was not representing all of the respondents. A letter dated June 13th, 1977, and it states among other things: "This is to the General Consulate, the Federal Election Commission. You claim that CTEL, the Committee to Elect Lyndon La Rouche, made false and misleading statements." It was a very general statement. We requested additional specificity. We requested this charge be explained in detail and made more specific. The respondents had notice of what statements they were talking about, what was under investigation. We asked the Commission: What statements are you referring to? Please state all of the reasons that the Commission believes that these statements were either false or misleading.

The Commission never responded to this letter. The

respondents had no specificity of the charges. They didn't know what they were accused of. Concerning some of the other respondents, the United States Labor Party, the Committee to Elect Lyndon La Rouche, and the National Caucus of Labor Committees, the Commission claimed that they are affiliated, the Commission has intricate regulations and affiliations, and counsel queried the Commission: What section of the regulation or statute does the Commission believe had been breached? No response was forthcoming to the letter, so respondents had no means of knowing what sections of the regulations, or the statute that the Federal Election Commission was referring to, and before the Commission starts issuing subpoenas, the respondents are entitled to show that, their reason to believe their violations are unfounded. The matter could have ended there if the Commission would have specified the charges. Further, we feel that the subpoenas were taken, the action, to subpoena the material was taken in retaliation for the lawsuits brought by two of the Committees, the United States Labor Party and the Committee to Elect Lyndon LaRouche.

In fact, counsel for the Federal Election Commission has stated as such that if we hadn't brought those actions that they wouldn't have taken actions against the United States Labor Party and the Committee to Elect Lyndon LaRouche. In fact, in their own papers they state that the 12 subpoenas, only five of which are returned enforced, today, were served the same day they got service of a temporary restraining order to stop them from investigating, and the Court has not been notified that the preliminary injunction in that matter is still under consideration. This matter could have been referred to Judge Robinson, but instead they filed it and did not claim that it was a related case, which we feel that it may be.

I would like to continue on why we feel that the subpoenas are illegal. We rely in the main on the case of Pollard v. Roberts, a three-judge Court, 283 F.Sup., 248. It was affirmed by the United States Supreme Court in 393 U.S., 410.

We also rely heavily on the case of Doe v. Martin of this Circuit.

THE COURT: What are the facts in the Pollard case?

MR. JOSEPH: The facts are exceedingly close to this, The Republican party in a Southern state, I believe it was,—Arkansas I'm sorry, was being investigated by the State Attorney General. Now, the Republican Party in that State is a very minor party, was considered so in the opinion. Many subpoenas were filed on the party and on groups allegedly related to the party. It was an affirmative action to stop the subpoenaes because they considered it harassing. The Court granted both the T.R.O. and a permanent injunction against the subpoenas. I would like to quote—

THE COURT: What about the preliminary in that case?

MR. JOSEPH: I believe the preliminary was considered with the permanent injunction in that case.

THE COURT: In the Pollard case was there any effort on the part of the Commission to seek the information as they have sought to seek it here, according to counsel?

MR. JOSEPH: In that case it wasn't a Federal Election Commission, it was the State Attorney General who was seeking the information. I do not know the specific administrative steps he took. I believe that he did take some. That case was quoted in the case of Doe v. Martin, which was written by Judge Leventhal, which was also a three-judge Court, 404 F.Supp. 753, a 1975 case.

ORDER OF OCTOBER 18, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Miscellaneous No. 77-0190

FEDERAL ELECTION COMMISSION,

Petitioner,

v.

COMMITTEE TO ELECT
LYNDON LA ROUCHE, ET AL.,

Respondents.

ORDER

Upon consideration of respondents' motion for a stay pending appeal of the Court's Order of September 26, 1977, compelling compliance with subpoenas of the petitioner FEC, and the memoranda filed in support and opposition thereto, and the Court having concluded that respondents have failed to show a substantial likelihood of success on the merits of their appeal, *see Blankenship v. Boyle,* 447 F.2d 1280 (D.C. Cir. 1971), it is by the Court this 18th day of October, 1977,

ORDERED that respondents' motion for a stay pending appeal of the Court's Order of September 26, 1977, should be, and hereby is, denied.

/s/Oliver Gasch
Judge

ORDER OF SEPTEMBER 26, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL ELECTION COMMISSION

Petitioner,

v. *Misc. No. 77-0190*

COMMITTEE TO ELECT LYNDON LA ROUCHE, et al.,

Respondents

MEMORANDUM-ORDER

The Federal Election Commission ("FEC") seeks an order directing each of five respondents to comply with subpoenas issued by the FEC. The respondents are the Committee to Elect Lyndon LaRouche ("CTEL"); the United States Labor Party ("USLP"); the National Caucus of Labor Committees ("NCLC"); New Solidarity International Press Service, Inc. ("NSIPS"); and Campaigner Publications, Inc. ("CP"). Counsel for petitioner and respondents appeared at a show cause hearing in open Court on September 8, 1977 to argue the matter. For the reasons set forth briefly below, the Court has decided to order respondents, except the United States Labor Party, to comply with the subpoenas.

The subpoenas at issue are connected with an FEC investigation into suspected violations of campaign laws

during the 1976 presidential campaign of Lyndon LaRouche, candidate of the United States Labor Party. In October, 1976, LaRouche applied to the FEC for presidential primary matching funds pursuant to 26 U.S.C. §9033. Following an audit and contribution verification investigation,[1] the FEC determined on February 10, 1977, that LaRouche failed to meet the matching fund threshold in verifiable contributions.[2] The FEC also concluded, based on information obtained during the audit and field investigation, that the five respondents may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Accordingly, the FEC notified the respondents on May 13, 1977, that it was initiating an investigation into these suspected violations.[3] On June 24, after respondents failed to respond to the FEC's notice, the FEC served the subpoenas at issue by mail, returnable in New York City on July 8 for the production of documents and on July 14 and 15 for depositions.[4] After an extension of the return date until July 20, the respondents informed the FEC on July 19 that they would not comply with the subpoenas. The FEC initiated court proceedings to enforce the subpoenas by obtaining an order to show cause against the respondents on August 23, 1977.

MERITS

A. *Subject Matter Jurisdiction.*

Respondents have moved to dismiss the FEC petition contending that the Court lacks subject matter jurisdiction

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1. The Federal Election Campaign Act of 1971, as amended specifically authorizes the FEC to make audit and field investigations for the purpose of verifying matching fund submissions. 2 U.S.C. §438 (Supp. V 1975); 26 U.S.C. §9038 (Supp. V 1975).

2. Brief in Support of Petition to Enforce Subpoena of the Federal Election Commission (Brief of Petitioner) at 2.

3. *See* Brief of Petitioner, Attachment #1.

4. *See id.*, Attachment #3.

to enforce the subpoenas. The Act provides that any district court "within the jurisdiction of which any inquiry is carried on" may order compliance with an FEC subpoena. 2 U.S.C. §437d(b) (Supp. V 1975). Respondents argue that the situs of the FEC inquiry is New York City and not the District of Columbia; they emphasize that the subpoenas were returnable in New York, the documents sought presumably are located in New York, and the parties reside or have their principal places of business in New York.[5]

Although no courts have interpreted this jurisdictional provision for district court enforcement of FEC subpoenas, several courts have broadly construed an identical jurisdictional grant relating to Federal Trade Commission subpoenas.[6] *See, e.g., FTC v. Browning*, 435 F.2d 96 (D.C. Cir. 1970). In determining the place or places where an "inquiry is being carried on," these courts have not looked solely to the respondent's place of residence and the location of documents and witnesses. They also have given due weight to the convenience of the investigating agency and the power of the agency to decide where to conduct an inquiry. *See FTC v. MacArthur*, 532 F.2d 1135, 1140-41 (7th Cir. 1976). In the case at bar, although the documents sought and the respondents' offices are in New York, the FEC investigation is being carried out by staff in its office in Washington, D.C.[7] Unlike larger agencies, the FEC has a single office, located in Washington, D.C. and does not have regional offices in New York or elsewhere. The FEC, which made the subpoenas returnable in New York solely for the convenience of the respondents,[8] intended to send staff from Washington to New York to conduct depositions and examine documents.

In urging that the situs of the FEC inquiry is New York, respondents overlook that the inquiry might reasonably be viewed as being carried on in both Washington and New York.[9] Whatever the basis for saying that the inquiry is being carried on in New York, however, the Court concludes that the participation of the FEC's Washington office in this inquiry is sufficient to confer jurisdiction on the court to enforce the subpoenas.

B. *Personal Jurisdiction.*

In their motion to dismiss, respondents also contend that the Court lacks personal jurisdiction over them because of improper service on three respondents of the show cause order and inadequate notice to all of the respondents of the show cause hearing.[10] Service of the show cause order was made on two individuals in New York on September 7, one day before the show cause hearing.

Despite the later service, respondents cannot reasonably argue that they lacked adequate time to prepare their defense for the hearing. Respondents were served with the subpoenas in late June and have had ample opportunity to voice their objections to the subpoenas. More importantly, counsel for respondents conceded at the show cause hearing that he notified respondents of the show cause order when he was served with it on August 23.[11]

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5. Statement of Points and Authorities in Support of Respondents' Motion to Dismiss at 1.

6. *See* 15 U.S.C. §49 (1970).

7. The determination that respondents may have violated campaign laws was made by the FEC in Washington, D.C. and presumably was based on an examination of LaRouche's matching fund submission by staff in the FEC's Washington office, which is the Commission's only true office. Moreover, all correspondence by the FEC with the respondents concerning the investigation emanated from the FEC's Washington office. *See* Brief of Petitioner, Attachments #1 and #2.

8. Brief of Petitioner at 3-4.

9. *See FTC v. MacArthur*, 532 F.2d at 1141.

10. Statement of Points and Authorities in Support of Respondents' Motion to Dismiss at 2.

11. The fact that respondents did not decide until September 7 to retain Washngton counsel to represent them at the show cause hearing does not detract from the fact that they had actual notice of the hearing on August 23.

The issue of proper service of the show cause order raises more substantial questions. Respondents admit that the service on the two individuals, Mr. Spannaus and Ms. Berg, was sufficient to place respondents NSIPS and CP within the Court's jurisdiction. Respondents appear to argue, however, that Mr. Spannaus and Ms. Berg could not be served for USLP, NCLC, or CTEL because they are not "officers" or "managing or general agents" of those organizations. Rule 4(d)(3) of the Federal Rules of Civil Procedure provides that service on unincorporated associations is effectuated by serving an "officer" or "managing or general agent" of the association. The FEC has taken the position, therefore, that effective service was made on NCLC and CTEL because Mr Spannaus is on the Board of Directors of NCLC and Ms. Berg is the press officer of CTEL. The Court concludes that sufficient service of the show cause order was made upon NCLC and CTEL to bring them within the Court's jurisdiction. Although Mr. Spannaus and Ms. Berg technically might not be considered "officers" or "managing or general agents" of NCLC and CTEL, their positions within those organizations indicate that they have sufficient authority and responsibility so that service on them satisfied the purpose behind Rule 4(d)(3).[12] Moreover, it is now well-settled that strict compliance with the Federal Rules of Civil Procedure is not required for summary proceedings such as the subpoena enforcement action in this case. Rather, the Court merely must ensure that the rights of the respondents to an adversary hearing are protected. *Donaldson v. United States*, 400 U.S. 517, 529 (1971); *FTC v. Browning*, 435 F.2d 96, 104 (D.C. Cir. 1970).

There has been no indication, however, that responsible authorities of respondent USLP were served with the show cause order. The Court therefore concludes that USLP is not within the jurisdiction of the Court and cannot be compelled by an order from this Court to comply with the subpoena directed at it.

12. *See State of Georgia v. National Democratic Party*, 447 F.2d 1271, 1273 n.2 (D.C. Cir. 1971).

C. *Respondents' Claim of Harassment.*

The subpoenas at issue essentially seek records of expenditures of, contributions to, and lease and loan agreements between the various respondents. The FEC claims that these subpoenas are related to its investigation into three areas: the alleged failure of CTEL, USLP, and NCLC to register as "affiliated" committees; the alleged illegal corporate contributions by CP and NSIPS; and the alleged false statements by CTEL on matching fund submissions. After examining the subpoenas closely, the Court concludes that they are sufficiently definite and reasonably relevant to the matters under investigation. *United States v. Morton Salt, Inc., 338 U.S. 632, 652 (1950); FTC v. Browning, supra* at 102.

Respondents urge the Court not to enforce the subpoenas because they are allegedly part of an FEC effort to harass the respondents.[13] Respondents rely on two decisions recognizing the right of minor parties to be protected from harassing subpoenas and campaign disclosure requirements.[14] Those cases concerned specific allegations of government efforts to obtain the names of contributors to, and members of, minor parties. In the case at bar, however, the respondents are required by federal law to publicly disclose names of contributors, and respondents do not challenge the application of this disclosure requirement to them. The information sought by the FEC relates to an investigation into specific campaign law violations that resulted from a proper FEC

13. The respondents and several LaRouche contributors filed a suit in April seeking damages for alleged unconstitutional harassment by FEC agents in connection with the verification audit and field investigations. *Jones v. Unknown Agents of the Federal Election Commission*, U.S.D.C., D.C., Civil Action No. 77-0732. In conjunction with this suit, respondents' motion for a temporary order restraining the FEC from continuing its investigations of respondents was denied on June 28, 1977.

14. *Doe v. Martin*, 404 F. Supp. 752 (D.D.C. 1975); *Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968).

review of matching funds submissions. The information is not being requested for the purpose of public disclosure,[15] and there is no indication that these subpoenas are part of a scheme to harass respondents.

Wherefore, the Court having considered petitioner's request for an order enforcing its subpoenas served on respondents on June 26 and 27, and respondents' motion to dismiss the petition for lack of jurisdiction, and upon hearing in open Court on September 8, 1977, it is by the Court this 26th day of September, 1977,

ORDERED that respondents' motion to dismiss should be, and hereby is, denied as to all respondents except the United States Labor Party; and it is further

ORDERED that respondents the Committee to Elect Lyndon LaRouche, the National Caucus of Labor Committees, New Solidarity International Press Service, Inc., and Campaigner Publications, Inc., by and through their agents, comply forthwith with the subpoenas served on them by the Federal Election Commission on June 26 and 27, 1977.

/s/Oliver Gasch
Judge

15. In *Doe v. Martin, supra* at 761, the court emphasized that minor parties alleging harassment are still subject to government investigations into campaign practices.

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1987

FEDERAL ELECTION COMMISSION, APPELLEE

v.

COMMITTEE TO ELECT LYNDON LA ROUCHE, ET AL., APPELLANTS

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action No. 77-0190)

Argued September 27, 1978

Decided August 23, 1979

David S. Heller, a member of the bar of the Supreme Court of Wisconsin, *pro hac vice*, by special leave of the court, with whom *Joel D. Joseph* was on the brief, for appellants.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Charles N. Steele, Associate General Counsel and *Barbara Van Gelder*, Attorney, Federal Election Commission, with whom *William C. Oldaker*, General Counsel, *Lester N. Scall*, Assistant General Counsel, Federal Election Commission, were on the brief, for appellee.

Also *Paul D. Kamenar* entered an appearance for appellants in this case.

Before MCGOWAN and TAMM, *Circuit Judges*, and JUNE L. GREEN,* *District Judge*.

Opinion for the court filed by *Circuit Judge* MCGOWAN.

MCGOWAN, *Circuit Judge*: This is an appeal from an order of the District Court enforcing subpoenas issued by the Federal Election Commission (Commission) during an investigation into possible violations of the federal election laws in connection with the campaign of Lyndon La Rouche for the 1976 Presidential nomination of the United States Labor Party (USLP).[1] Appellants, the Committee to Elect Lyndon La Rouche (CTEL), the National Caucus of Labor Committees (NCLC), the New Solidarity International Press Service, Inc. (New Solidarity), and Campaigner Publications, Inc. (Campaigner), challenge the decision under review on the grounds that the District Court lacked subject matter jurisdiction to entertain the suit, that appellants were not subject to extraterritorial service of process, and that the District Court erred in not permitting appellants to demonstrate that the subpoenas were issued for an

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* Of the United States District Court for the District of Columbia, sitting by designation pursuant to 28 U.S.C. § 292 (a) (1976).

[1] This appeal was consolidated for purposes of oral argument with Committee to Elect Lyndon La Rouche v. Federal Election Commission, No. 77-1184, and Jones v. Federal Election Commission, No. 77-2093, both decided this date.

improper purpose. For reasons hereinafter appearing, we affirm the decision under review.

I

The events culminating in the issuance of the Commission's subpoenas began on October 14, 1976, when Lyndon La Rouche applied to the Commission for primary matching funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042 (1976). To qualify for such funds, a candidate must certify, *inter alia*, that he has received in excess of $5,000 in contributions of $250 or less in each of at least 20 states. *Id.* § 9033(b)(3)-(4). In support of his application, La Rouche submitted a notarized statement that he had raised the threshold amount. But neither La Rouche nor CTEL, his principal campaign committee, provided appropriate documentation of the contributions.

On November 4, 1976, the Commission authorized its staff to conduct a field audit in order to verify La Rouche's eligibility for matching funds. That audit, which took place shortly thereafter at CTEL's headquarters in New York City, uncovered many instances where contributions made by money order or cashier's check raised substantial questions as to whether the contributions were made by residents of the states indicated. In addition to these irregularities, the audit revealed a pattern of heavy last-minute contributions from persons listing their occupation as that of "volunteer coordinator" for NCLC, an organization that, during the last two weeks of the eligibility period, received payments from CTEL of more than $310,000. It further indicated that CTEL shared office space and common personnel with NCLC and three other organizations (New Solidarity, Campaigner, and the USLP) and that those organizations accounted for 78% of CTEL's expenditures and 97% of its debt. These findings seemed particularly significant in light of the fact

that CTEL had surpassed the $5,000 threshold by only a narrow margin in at least several states.

In response to these findings, the Commission both expanded the audit to include the four organizations closely related to CTEL and authorized the Commission staff to interview CTEL contributors in order to verify their contributions. During the week of January 26, 1977, agents of the Commission either did, or attempted to, interview listed contributors in three states, Delaware, Massachusetts, and Wisconsin. The results of the field interviews revealed that in neither Delaware nor Wisconsin had La Rouche raised the threshold amount. Accordingly, on February 10, 1977, the Commission rejected La Rouche's application for matching funds. We today affirm that decision in No. 77-1184. *Committee to Elect Lyndon La Rouche v. Federal Election Commission*, No. 77-1184 (D.C.Cir. August 23, 1979).

On April 28, 1977, the USLP, CTEL, and ten individuals who contributed to CTEL in 1976 filed suit in the District Court, seeking damages and injunctive relief against the Commission and various members of its staff. The principal allegations were that the field interviews of CTEL contributors were unauthorized by statute and violative of the first and fourth amendments. On October 25, 1977, the District Court granted defendants' motion for summary judgment, concluding that "nothing in the record . . . supports or . . . could support any alleged violation of Plaintiffs' . . . statutory or constitutional rights." In No. 77-2093, we today affirm that decision in part, and reverse in part. *Jones v. Federal Election Commission*, No. 77-2093, (D.C.Cir. August 23, 1979).

While the *Jones* case was pending in the District Court, the Commission, upon reviewing both the results of the inquiry into La Rouche's eligibility for matching funds and various reports of contributions and expenditures required to be filed with the Commission pursuant to 2

U.S.C. § 434, determined that there was reason to believe that the USLP, CTEL, NCLC, New Solidarity, and Campaigner (the five organizations) had violated certain provisions of the federal elections laws. By letters dated May 13, 1977, the Commission notified each of the five organizations that they were under investigation and, in each case, detailed the nature of the suspected statutory violations. Thus, the letter to NCLC indicated that there was reason to believe that NCLC was a political committee and, as such, had violated 2 U.S.C. sections 433 and 434 by failing to register and file reports with the Commission; that there was reason to believe that NCLC had violated 2 U.S.C. section 441a by making excessive in-kind contributions to CTEL and the USLP; and that there was reason to believe that NCLC had violated 2 U.S.C. section 433(b)(2) by not registering as an affiliated committee with CTEL and the USLP.

The letters to New Solidarity and Campaigner notified them that they might be in violation of 2 U.S.C. section 441b(a) for making illegal in-kind corporate contributions to CTEL and the USLP by extending to those organizations long-term credit on behalf of the La Rouche campaign. The Commission notified the USLP that there was reason to believe that, in contravention of 2 U.S.C. section 433(b)(2), it had failed to report its affiliation with CTEL and NCLC. Finally, the Commission notified CTEL that not only had it failed to report its apparent affiliation with NCLC and the USLP, but also that there was reason to believe that CTEL had made false or misleading statements in its submissions for matching funds.[2]

On June 9, 1977, the Commission, having yet to receive a response to its letters of May 13, sent follow-up letters to the five organizations. By letters of June 11, 1977, and June 13, 1977, local Washington counsel notified the Com-

[2] This letter also notified CTEL that the Commission was consolidating its earlier cases into this matter.

mission that they had been retained to represent the five organizations. In addition to seeking further information about the charges, counsel requested the Commission to stay its investigation until the District Court decided the *Jones* case. This request was denied.

On June 24, 1977, the Commission, in furtherance of its investigation, subpoenaed the five organizations to produce at their New York offices on July 8, 1977, specified documents pertaining to their expenditures, contributions, and lease and loan agreements.[3] On July 1, 1977, the Commission received a request from local Washington counsel asking for additional time in which to secure counsel in New York and to assemble the documents for Commission review. This request was denied; however, the Commission staff offered to reschedule the return date.

On July 8, 1977, when the Commission staff went to New York to examine the subpoenaed documents, representatives of the five organizations and newly retained New York counsel indicated that the materials were not yet assembled. Counsel for the Commission nonetheless used the occasion to review each subpoena and the attachments thereto with the representatives of the organizations and New York counsel. At the July 8 meeting, New York counsel stipulated to produce the documents on July 20, 1977; counsel for the Commission agreed to return to New York to review the documents on that date. On July 19, 1977, however, New York counsel notified the Commission that the five organizations would not comply with the subpoenas.

On August 23, 1977, the Commission petitioned the District Court below for enforcement of the subpoenas

[3] The Commission issued the subpoenas pursuant to its authority "to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties." 2 U.S.C. § 437d(a)(3) (1976).

pursuant to 2 U.S.C. section 437d(b), which authorizes any United States district court "within the jurisdiction of which any inquiry is carried on" to order compliance with a Commission subpoena. That same day, the District Court issued a show cause order requiring the five organizations to appear on September 8, 1977, to demonstrate why the subpoenas should not be enforced. The District Court further directed that the show cause order be served on the organizations by the United States Marshal in New York. Copies of the petition, exhibits, and memoranda also were mailed to the organizations' New York counsel and hand delivered to local Washington counsel.

On September 7, 1977, local Washington counsel filed a motion to dismiss the petition on the ground (1) that, inasmuch as New York, not the District of Columbia, was the situs of the Commission's inquiry, the District Court lacked subject matter jurisdiction to entertain the suit under 2 U.S.C. § 437d(b), (2) that the United States Marshal in New York had not effected service of the show cause order upon either CTEL or the USLP, and (3) that the remaining three organizations, having been served only earlier that day, lacked adequate time to prepare a defense. At the show cause hearing held on September 8, 1977, local counsel also urged the District Court not to enforce the subpoenas for several additional reasons, including the allegation that the subpoenas were issued for the improper purpose of harassment and retaliation for the two pending law suits filed by CTEL and the USLP against the Commission. At the conclusion of his argument, local counsel requested leave to file a "written statement" within 10 days. The District Court, however, after hearing rebuttal argument, rejected counsel's request, indicating that it would probably rule on the papers.

On September 26, 1977, the District Court issued a Memorandum Order concluding that it had subject mat-

ter jurisdiction over the petition because the Commission's inquiry was properly viewed as being carried on in the District of Columbia. The District Court also held that, except for the USLP, all the organizations had been properly served, and had been afforded adequate time to prepare their defense. It further rejected the claim that the subpoenas were issued for the purpose of harassment or retaliation. Accordingly, the District Court ordered CTEL, NCLC, New Solidarity, and Campaigner to comply with the Commission's subpoenas.

On September 28, 1977, those organizations filed this appeal and later applied for a stay pending appeal. This court, on November 8, 1977, denied appellants' motion for a stay.

II.

We are urged to reverse the District Court on three grounds.[4] Two of the grounds relate to the jurisdictional provision for the enforcement of Commission subpoenas, 2 U.S.C. § 437d(b), which provides:

> Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

[4] We find no merit in appellants' fourth ground for reversal, namely, that the enforcement of the Commission's subpoenas was "premature" insofar as the Commission failed to discharge its obligation to afford appellants "a reasonable opportunity to demonstrate that no action should be taken against [them]," 2 U.S.C. § 437g(a)(4) (1976). It is our view that appellants were afforded a more than adequate opportunity to demonstrate their compliance with the federal election laws when, on July 8, 1977, counsel for the Commission, who had been sent to New York to examine the subpoenaed documents, reviewed the subpoenas and the attachments thereto with appellants and their New York counsel.

First, appellants renew their argument that the District Court lacked subject matter jurisdiction to entertain this enforcement petition, because, within the meaning of section 437d(b), the Commission's "inquiry [was] carried on" in New York rather than in the District of Columbia. Second, urging us to construe section 437d(b) as not authorizing extraterritorial service of process, appellants assert that, inasmuch as they were served in New York, the District Court lacked personal jurisdiction to enforce the subpoenas. Third, in a claim unrelated to section 437d(b), appellants argue that the District Court erred in not providing them with at least some opportunity to substantiate their allegations that the subpoenas were issued for an improper purpose. We turn now to these arguments.

A.

Appellants assert that, within the meaning of section 437d(b), the District of Columbia was not a place where the Commission's "inquiry [was] carried on" and that, accordingly, the District Court lacked subject matter jurisdiction to entertain this suit. It is appellants' view that inasmuch as the documents at issue were located in New York, the subpoenas were made returnable in New York, appellants maintain their principal places of business in New York, and prior Commission audits took place in New York, the District Court erred in concluding that the District of Columbia was a situs of the Commission's inquiry.

It appears that we are the first court, other than the District Court, to be called upon to determine where a Commission "inquiry [was] carried on" for purposes of establishing jurisdiction to enforce a subpoena under section 437d(b). But, as the District Court correctly noted, we do not write on an entirely clean slate. Both section 9

of the Federal Trade Commission Act, 15 U.S.C. § 49 (1976), and section 112(c)(4) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1401(c)(4) (1976), are virtually identical to section 437d(b), providing as they do for the enforcement of subpoenas in any "United States district court within the jurisdiction of which [the agency's] inquiry is carried on." [5] Several courts have construed these provisions, and we look now to their decisions.

The leading case in this regard is *FTC v. MacArthur*, 532 F.2d 1135 (7th Cir. 1976). There the FTC was conducting an investigation to determine whether Bankers Life and Casualty Company had engaged in unfair and deceptive acts or practice in connection with the sale of land in Colorado. The FTC, as part of the investigation,

[5] These provisions are not precisely identical to section 437d(b). Section 9 authorizes the enforcement of an FTC subpoena in any United States district court "within the jurisdiction of which *such* inquiry is carried on" (emphasis added), referring to the express power of the FTC to require the "attendance of witnesses, and the production of documentary evidence, . . . from any place in the United States, at any designated place of hearing." 15 U.S.C. § 49 (1976). Section 112(c)(4) provides for the enforcement of a subpoena of the National Highway Traffic Safety Administration in any United States district court "within the jurisdiction of which *an* inquiry is carried on." 15 U.S.C. § 1401(c)(4) (1976) (emphasis added). Finally, section 437d(b) authorizes the enforcement of a Commission subpoena in any United States district court "within the jurisdiction of which *any* inquiry is carried on." 2 U.S.C. § 437d(b) (1976) (emphasis added).

These minor differences in phrasing, however, are not, we think, significant enough to cause us to depart from the case law interpreting section 9 and section 112(c)(4) in our task of determining where, within the meaning of section 437d(b), the Commission's inquiry [was] carried on." *See* United States v. Firestone Tire & Rubber Co., 455 F. Supp. 1072 (D.D.C. 1978) (applying the section 9 case law to interpret section 112(c).(4)).

subpoenaed Bankers' president to produce specified documents and to testify at an investigative hearing at the FTC's regional office in Chicago. When the FTC later sought judicial enforcement of the subpoena in Chicago, Banker's president resisted on the ground that many of the subpoenaed documents were located in Florida and that, in any event, no inquiry was being carried on in Chicago because other FTC regional offices also were involved in the investigation. The district court apparently rejected this argument at least with regard to the documents located within its jurisdictional limits.

When the argument was renewed on appeal, the Seventh Circuit outlined the following test:

> *The test whether the Commission is undertaking an inquiry in a particular place is whether that place and the activities occurring there bear a reasonable relation to the subject matter of the investigation.* Factors such as the convenience of the Commission, the location of documents and witnesses, and the corporate headquarters of the company are relevant in determining whether there is an inquiry in a particular judicial district when the only action taken by the Commission is a request for information. *As in other areas, the Commission's choice of a place of inquiry is subject to the bound of reasonableness.*

Id. at 1140 (emphasis added). Applying this test, the court concluded that inasmuch as Bankers had its corporate headquarters in Chicago, many of the documents presumably were located in Chicago, and the FTC had selected Chicago as the place to conduct its investigational hearing, sufficient inquiry was being carried on in that district to confer jurisdiction to enforce the subpoenas. *Id.* at 1140-41.

With regard to the fact that some documents may have been located in Florida, the court recognized that where

an investigation involves matters in more than one jurisdiction, there necessarily may not be a single district in which the inquiry is being carried on, but rather many such districts. It also expressed the view that, subject to the "bound of reasonableness," an agency should be given substantial leeway in selecting its place of inquiry for subpoena enforcement purposes. The court in *MacArthur* concluded that, on the facts there presented, the FTC had not exceeded that "bound" in selecting Chicago as its place of inquiry. *Id.*

Three cases decided in this jurisdiction, each involving an essentially nationwide investigation conducted from an agency's national office here in the District of Columbia, reveal that the "bound of reasonableness" is broad indeed. Two of these cases arose in the context of adjudicative proceedings before the FTC. In *FTC v. Browning*, 435 F.2d 96 (D.C.Cir. 1970), where a corporation was under investigation for possible antitrust violations with regard to its acquisition of five firms in three states, the FTC subpoenaed an officer of the corporation requiring him to produce specified corporate books and records at a hearing in the District of Columbia. When he failed to comply, the FTC brought suit to enforce the subpoena in the District of Columbia even though the corporate officer maintained his residence and principal place of business in Pennsylvania.[6] The district court issued an enforcement order. On appeal, this court, noting that the subpoena against the corporate officer had been issued, and was returnable, in the District of Columbia, concluded that "the designated place of hearing is Washington, D.C., which is thus necessarily a place where the 'inquiry is carried on.'" *Id.* at 100 & n.8.

[6] In connection with the same investigation, the FTC was also seeking to enforce thirteen subpoenas against third-party witnesses located in seven different judicial districts. 435 F.2d at 100.

The second case arising in the context of an FTC hearing was *FTC v. Cockrell*, 431 F.Supp. 558 (D.D.C. 1977). There the FTC had charged three parties, including the American Medical Association, with violating section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1976), by agreeing to prevent or hinder competition among physicians by means of publishing, circulating, and enforcing nationwide "ethical standards." As part of an adjudicative proceeding being conducted in the District of Columbia, an FTC administrative law judge issued subpoenas to respondents, a Texas medical society and its executive director, as well as to other third-party witnesses across the country. These subpoenas, which were made returnable in the District of Columbia, sought information regarding ethical standards imposed on physicians and the interpretation, application, and enforcement of those standards.

When the FTC petitioned for judicial enforcement of the subpoenas in this jurisdiction, respondents objected on the ground that the activities under investigation bore no reasonable relationship to the District of Columbia and that, accordingly, this was not a jurisdiction within which the FTC's inquiry was being carried on. The district court rejected this argument:

> Respondents, however, misconstrue the nature of the FTC's inquiry in the present case. The FTC inquiry here is not focused on respondents and their activities in Texas; rather, it is a *nationwide* inquiry and respondents are being subpoenaed merely as third-party witnesses. As such, it is clear that the Commission's choice of the District of Columbia as the place for its inquiry does not exceed "the bound of reasonableness."

431 F. Supp. at 559 (emphasis in original) (quoting *FTC v. MacArthur*, *supra*, 532 F.2d at 1140). Reasoning that the case was controlled by *Browning*, the district

court concluded that it had jurisdiction to enforce the subpoenas.

A similar result was reached in *United States v. Firestone Tire & Rubber Co.*, 455 F.Supp. 1072 (D.D.C. 1978), a case involving not a formal adjudicative proceeding before the FTC, but rather an informal investigation by the National Highway Traffic Safety Administration (NHTSA). In *Firestone Tire*, NHTSA brought suit in the District of Columbia to enforce "special orders," akin to administrative subpoenas, issued to Firestone in connection with an investigation into alleged defects in Firestone's steel-belted radial tires. The special orders, which were issued from the District of Columbia, sought information regarding the different types and quantities of tires produced and distributed by Firestone, consumer complaints about those tires, and suits against Firestone for damages due to accidents allegedly caused by tire defects. When NHTSA sued for enforcement in this jurisdiction under section 112(c)(4) of the National Traffic and Motor Vehicle Safety Act, Firestone urged the district court to conclude that it lacked jurisdiction because NHTSA's "inquiry [was being] carried on" not in the District of Columbia, but rather in Ohio where Firestone maintained its corporate headquarters and the requested information was located.

It was the view of the district court, however, that a finding of no jurisdiction in the District of Columbia would be contrary both to "common sense" and NHTSA's broad investigative mandate to ensure highway traffic safety. The district court further observed:

> NHTSA's concern is not with the activities of Firestone within the Northern District of Ohio, but with the safety of all Firestone tires in the country. As such, given the broad nature of NHTSA's concern in this case, this would appear to qualify as a nationwide inquiry within the meaning of *FTC v. Cockrell, supra.* Therefore, since this investigation is directed from Washington, D.C., it does not exceed the bounds of reasonableness to find that the District of Columbia is a place within which this inquiry is being carried on.

Id. at 1077. Thus, although recognizing that Ohio might also be said to be a situs of the inquiry, the district court concluded that, for jurisdictional purposes, the District of Columbia was a place where NHTSA's inquiry was being carried on. Accordingly, as in the *Browning* and *Cockrell* cases, the court in *Firestone Tire*, confronted with a situation where an agency was conducting an essentially nationwide investigation from its national office in the District of Columbia, accorded the agency broad discretion in selecting the District of Columbia as its place of inquiry.

The case law interpreting section 9 and section 112 (c)(4) is, we think, an appropriate guide in our task of determining where the Commission's "inquiry [was] carried on" within the meaning of section 437d(b). Accordingly, we must determine (1) whether the District of Columbia bore a sufficiently "reasonable relation to the subject matter of the investigation," *FTC v. MacArthur, supra*, 532 F.2d at 1140, to qualify as a place where the inquiry was carried on, and (2) whether the agency's choice of this jurisdiction as its place of inquiry exceeded "the bound of reasonableness," *id.*

It is our view that the District of Columbia was a place where the Commission's inquiry was carried on. The nexus between this jurisdiction and the Commission's investigation lies in the fact that the District of Columbia, where the Commission maintains its headquarters, was the hub of the Commission's investigative activity. It was in this jurisdiction where the Commission authorized the auditing of CTEL's records and the interviewing of its contributors, where the Commission

determined that there was reason to believe that appellants may have violated the federal election laws, where all correspondence regarding those possible violations emanated, and where the subpoenas were in fact issued.[7] We also regard it as significant, though not surprising, that appellants, when first notified by letter that they were under investigation, retained local counsel in the District of Columbia. That appellants retained local counsel before hiring New York counsel, and long before this enforcement petition was filed, strongly suggests that appellants themselves recognized that the District of Columbia was the important situs of the investigation. We have little difficulty, therefore, in concluding that, within the meaning of section 437(b), the District of Columbia was a place where the Commission's "inquiry [was] carried on."

Nor do we regard the Commission's choice of the District of Columbia as its place of inquiry as having exceeded the "bound of reasonableness." Appellants urge us to construe that "bound" more narrowly under section 437d(b) than under section 9 or section 112(c)(4) because the Commission's investigative mandate, involving as it does electoral activity, touches upon constitutionally protected rights of freedom of association. In particular, appellants argue that a substantial chilling effect would result if the Commission, as part of a nationwide investigation, could enforce in the District of Columbia subpoenas issued to individual contributors to a minor party across the United States.

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[7] It is true that the subpoenas were returnable in New York, but this was done solely for the convenience of appellants. A. 9-10. The Commission intended to send its staff from Washington to New York to examine the documents. The same procedure had been followed when the Commission conducted its audit of CTEL's records in connection with La Rouche's application for primary matching funds.

It is our view that appellants are correct in suggesting that the chilling effect of the Commission's choice of its place of inquiry ought to be considered in determining whether the choice falls within the "bound of reasonableness." In the instant case, however, which of course does not involve subpoenas issued to individual contributors, the record is devoid of any evidence of chill resulting from the fact that the subpoenas were enforced in the District of Columbia.

What the record does reveal is that the Commission's investigation was not localized in New York, but rather was nationwide in scope.[8] When La Rouche applied for primary matching funds, he submitted a notarized statement that he had raised the threshold amount of $5,000 or more in contributions of $250 or less in each of 20 states. In an effort to verify La Rouche's statement, the Commission conducted field interviews of CTEL contributors in three states, Delaware, Massachusetts, and Wisconsin. When those interviews, together with an audit of CTEL's records in New York, yielded discrepancies with reported contributions, the Commission conducted additional field interviews in Indiana. Moreover, when the Commission finally subpoenaed appellants' records, it was investigating to determine whether appellants had made illegal in-

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[8] Thus, appellant's reliance on FTC v. Western General Dairies, Inc., 432 F.Supp. 31 (N.D. Cal. 1977), is misplaced. In *Western General*, which involved an investigation into possible unfair trade practices in the distribution of milk in Utah and Idaho, the court rejected the argument that simply because a subpoena had been issued from the FTC's regional office in the Northern District of California, the FTC's inquiry was being carried on in that district. But, in so ruling, the court relied principally on the fact that the investigation was neither nationwide in scope nor related in any manner to the Northern District of California. *Id.* at 33-34. It is our view that, inasmuch as the instant case involves a nationwide investigation, *Western General* is inapposite.

kind corporate contributions, submitted false and misleading statements, and committed other violations of the federal election laws in connection with the *national* campaign of a candidate who had been endorsed by the USLP Caucus in 30 states and the District of Columbia.

It is our view that here, as in *Browning*, *Cockrell*, and *Firestone Tire*, the Commission was conducting an essentially nationwide investigation from its national office in the District of Columbia and, accordingly, it should be afforded broad discretion in selecting this jurisdiction as its place of inquiry. We cannot say, given the breadth of that discretion and the absence of any evidence of chill, that the Commission exceeded the "bound of reasonableness" in bringing this enforcement action in the District of Columbia. Accordingly, we conclude that the District Court had subject matter jurisdiction under section 437d (b) to entertain this subpoena enforcement action.[9]

B.

We turn now to the argument that the District Court lacked personal jurisdiction over appellants inasmuch as they were served not in the District of Columbia where the District Court sits, but rather in New York where appellants maintain their principal places of business.

[9] To say that the Commission's inquiry was being carried on in the District of Columbia is not to say that it was not also being carried on in New York. *See* FTC v. MacArthur, *supra*, 532 F.2d at 1141. Certainly, given the facts that the subpoenaed documents were located in New York, appellants maintain their principal places of business in New York, the subpoenaes were made returnable in New York, and prior Commission auditing took place in New York, the Commission probably could have brought this action to enforce its subpoenas in that district. But the Commission chose not to do so, and we honor their choice. It is our view that, for the reasons stated above, the Commission's choice of Washington as its place of inquiry did not exceed the "bound of reasonableness."

Service of process outside the territorial limits of the state in which a district court sits normally is permitted only "when authorized by a statute of the United States." [10] The issue we must decide, therefôre, is whether section 437d(b) is a statute authorizing extraterritorial service of process.

Although confronted with a question of first impression, we find, once again, that the same question has been resolved in a case involving a subpoena enforcement action brought under section 9 of the Federal Trade Commission Act.[11] In *FTC v. Browning*, 435 F.2d 96 (D.C.

[10] FED. R. CIV. P. 4(f).

[11] Section 9 provides in relevant part:

> For the purposes of sections 41 to 46 and 47 to 58 of this title the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.
>
> Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.
>
> Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary

Cir. 1970), appellant resisted the enforcement of a subpoena on the ground that he was served by mail outside the District of Columbia where the suit was filed. Appellant argued that section 9, which provides for the enforcement of an FTC subpoena in any United States district court "within the jurisdiction of which such inquiry is carried on," ought to be construed simply as a venue provision, rather than as a special jurisdictional provision authorizing extraterritorial service of process.

This court in *Browning* rejected appellants' argument:

> To interpret Section 9 as simply a venue statute would be to restrict the place of suit to a particular district and yet to deprive the court in that district of the power to obtain personal jurisdiction of a respondent, absent the fortuitous circumstance of that respondent voluntarily entering the district where the inquiry is being conducted.

Id. at 99. Such a construction, we noted, would run counter to the FTC's broad investigative powers and its express authority under section 9 to compel "attendance and testimony of witnesses and production of . . . documentary evidence relating to any matter under investigation . . . . from any place in the United States, at any designated place of hearing." We also observed that extraterritorial service of process would make "for uniformity in the application of the law and economy of judicial administration" by permitting an agency to center its enforcement proceedings in a single court. *Id.* at 100. Accordingly, we concluded that "by granting the power to enforce subpoenas only to those district courts 'within the jurisdiction of which such inquiry is carried

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evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

15 U.S.C. § 49 (1976).

on,' section 9 so limits the place of suit for enforcement of Federal Trade Commission subpoenas as to require an implied grant of authority for extraterritorial service of process in order to effectuate the purpose of the regulatory scheme." *Id.* (footnote omitted).

Section 437d(b) is, as we noted above, virtually identical to section 9, insofar as it grants the Commission authority to enforce its subpoenas only in those United States district courts "within the jurisdiction of which any inquiry is carried on." [12] Thus, at least at first blush, it appears that the reasoning of the *Browning* decision would be equally applicable in the instant case. Appellants, however, urge us, on three grounds, to depart from *Browning* in determining whether section 437d(b) is an implied grant of authority for extraterritorial service of process.[13]

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[12] 2 U.S.C. § 437d(b) (1976). We attach no decisional significance to the fact that section 9 refers to "the jurisdiction of which *such* inquiry is carried on," whereas section 437d(b) refers to "the jurisdiction of which *any* inquiry is carried on." *See* note 5 *supra*. As we explain below, the Commission is vested with an implicit grant of extraterritorial compulsory process broad enough to permit the Commission to conduct an inquiry comparable to that contemplated under section 9 by the FTC. *See* pages 31-33 *infra*. Accordingly, we see nothing on the face of the two provisions that would suggest that they should be interpreted differently at least insofar as extraterritorial service of process is concerned.

[13] Appellants also advance a fourth ground for distinguishing *Browning*, namely, that the legislative history of section 9 supported a finding of an implied grant of authority for extraterritorial service of process, whereas the legislative history of section 437d(b) is silent in this regard. This argument, we think, overstates this court's reliance in *Browning* on the legislative history of section 9, for the *Browning* court itself recognized that the legislative history was "not conclusive." 435 F.2d at 100.

Appellants first argue that the Commission, unlike the FTC, is not charged by statute with regulatory responsibility over matters requiring nationwide investigations. While describing "FTC investigations [as] often aimed at industrywide practices, which cover regional or possibly national areas, beyond a single person or company," appellants assert that "the FEC regulates individual candidates and their campaign committees, which are clearly limited to one locality." We are urged, therefore, to conclude that, given the localized nature of Commission investigations, it is unnecessary to construe section 437d (b) as authorizing extraterritorial service of process.

This argument, we think, falls far short of the mark. The Commission's investigative responsibilities with regard to primary matching funds are obviously nationwide in scope. A prerequisite for eligibility for matching funds is a minimum level of financial support for a candidate in at least 20 states. 26 U.S.C. § 9033(b)(3)-(4) (1976). Review of determinations in matching fund cases is centralized by statute in this court. *Id.* § 9041. Moreover, the Commission's general responsibilities under the Federal Election Campaign Act also clearly make it responsible for administering the federal election laws with regard to many organizations not local in nature, such as corporations and unions, 2 U.S.C. § 441b (1976), multicandidate committees and national parties, *id.* § 441 a(a), and government contractors, *id.* § 441c. Appellants thus are simply wrong when they state "the FTC regulates individual candidates and their campaign committees, which are *clearly limited to one locality*" (emphasis added). Many of the Commission's responsibilities involve nationwide matters, in particular Presidential campaigns, especially those seeking federal funds. It is our view, therefore, that the instant case is in no way distinguishable from *Browning* on grounds related to the scope of the Commission's investigative mandate.

Nor do we find merit in appellants' second ground for distinguishing *Browning*, namely, that the Commission, unlike the FTC, is not expressly authorized to compel "attendance and testimony of witnesses and the production of . . . documentary evidence relating to any matter under investigation . . . . from any place in the United States, at any designated place of hearing." [14] Although the Commission is not expressly granted extraterritorial power of compulsory process, we find such authority implicit in the breadth of the Commission's express investigative powers.

Section 437d(a) of the Federal Election Campaign Act vests the Commission with the power:

> (1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;
>
> . . .
>
> (3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;
>
> (4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; [15]

It is inconceivable to us that Congress would have vested the Commission with such broad powers of compulsory

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[14] 45 U.S.C. § 49 (1976).

[15] 2 U.S.C. § 437d(a)(1), (3), (4) (1976).

process, while intending that they not have extraterritorial effect. The Commission, if denied the power of extraterritorial compulsory process, would be unable to conduct a nationwide investigation without sitting, or sending its staff, to every jurisdiction in which witnesses or documents were located. To so fragment an investigation undoubtedly would frustrate the Commission in discharging what we have already determined is its nationwide mandate to oversee the federal election laws. Thus, although we need not, and do not, decide the precise extent to which the Commission may compel testimony and the production of documents from anywhere in the United States, we are convinced that the scope of the Commission's power in this regard is sufficiently broad to warrant an implied grant of authority for extraterritorial service of process under section 437(b).[16]

[16] This conclusion finds support in United States v. Firestone Tire & Rubber Co., *supra*, 455 F. Supp. at 1078-80, a suit to enforce "special orders," akin to administrative subpoenas, filed in the District of Columbia by the National Highway Traffic Safety Administration (NHTSA) under Section 112(c)(4) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. §1401(c)(4) (1976). Respondent, which had been served by mail at its corporate headquarters in Ohio, argued that section 112(c)(4) was not an implied grant of authority for extraterritorial service of process and that, accordingly, the district court lacked personal jurisdiction to enforce the special orders. Although recognizing that section 112(c)(4), like section 9 of the Federal Trade Commission Act, authorized the enforcement of an NHTSA special order in any United States district court "within the jurisdiction of which an inquiry is carried on," respondent sought to distinguish *Browning* on the ground that the Federal Trade Commission Act expressly authorized the FTC to issue subpoenas nationwide, whereas section 112(c)(4) contained no such grant of authority.

The court in *Firestone*, however, found such authority implicit in NHTSA's enabling statute. To deny NHTSA the power to issue special orders anywhere in the United States, the court reasoned, would be inconsistent with the broad enforcement jurisdiction conferred on the federal district

Appellants' third, and final, ground for distinguishing *Browning* is that extraterritorial service of process in the instant case, unlike that in *Browning*, would result in a substantial chilling effect on the exercise of constitutionally protected associational rights. It is asserted that a substantial chilling effect on associational rights undoubtedly would result in cases involving minor parties if individual contributors were subject to such long-distance service of process. We are urged, therefore, not to permit extraterritorial service of process under section 437d(b).

This "chilling effect" argument is, on the record of this case, simply too speculative to warrant us to construe section 437d(b) in a manner that we feel would frustrate the Commission in discharging its statutory mandate. The record before us is devoid of any evidence to suggest that, in the instant case, a chilling effect resulted from the fact that the Commission initiated this suit in the District of Columbia through extraterritorial service of process of appellants in New York.[17] Nor is there any

courts under section 112(c)(4) and the wide-ranging investigative powers conferred on NHTSA to discharge its national mandate of ensuring highway traffic safety. Having determined that NHTSA had an implied grant of authority to issue special orders nationwide comparable to that in the Federal Trade Commission Act, the court concluded, on the authority of *Browning*, that section 112(c)(4), like section 9, was an implied grant of authority for extraterritorial service of process.

[17] Appellants' only specific complaint is that the fact that the Commission made the subpoenas returnable in New York, but later sought enforcement in the District of Columbia, "forced [appellants] to obtain at least two sets of lawyers in these respective locations, . . . and resulted in great harm to [appellants] because of their limited ability to retain adequate legal resources necessary in an action involving a federal agency with relatively unlimited resources." The record indicates, however, that the Commission made the subpoenas returnable in New York for appellants' convenience, A. 9-10, and that, in any event, appellants had retained local counsel in Washington well before this suit was filed, A. 135-36.

evidence supporting the assertion that if we construe section 437d(b) as authorizing extraterritorial service of process, our holding will result in a significant encroachment on associational rights in future cases. This assertion, in our view, fails to recognize that the Commission's choice of its forum to enforce a subpoena is subject to the "bound of reasonableness." [18] We are confident that, especially in cases involving investigations of minor parties, district courts in determining whether the Commission's choice of forum falls within the "bound of reasonableness" will give appropriate consideration to the chilling effect of permitting the Commission to enforce its subpoenas outside the jurisdiction in which the subpoenaed parties reside or maintain their principal places of business. That protection, we think, is sufficient to safeguard against undue chill in future cases.

It is our view, in sum, that the reasoning of the *Browning* decision is equally applicable in the instant case. We thus conclude that section 437d(b), by granting the power to enforce subpoenas only to those district courts "within the jurisdiction of which any inquiry is carried on," so limits the place of suit for enforcement of Commission subpoenas as to require an implied grant of authority for extraterritorial service of process to effectuate the purpose of the regulatory scheme. Appellants, accordingly, were properly served in New York.[19]

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[18] *See* pages 15-16 *supra*.

[19] Nor do we find merit in appellants' argument that service on New Solidarity and NCLC was defective because the individuals served on behalf of New Solidarity and NCLC were neither "officer[s]" nor "managing or general agent[s]" of those organizations. *See* FED. R. CIV. P. 4(d)(3). It appears the individuals who were served held positions of sufficient authority to satisfy the purposes of Rule 4(d)(3), *see* State of Georgia v. National Democratic Party, 447 F.2d 1271, 1273 n.2 (D.C. Cir.), *cert. denied*, 404 U.S. 858 (1971), and that appellants had adequate actual notice of the hearing to prepare a proper defense, *see* Giordani v. Hoffman, 295 F. Supp. 463, 469 (E.D. Pa. 1969).

C.

Appellants' final contention is that the District Court erred in denying them at least some opportunity to substantiate their allegations of harassment and retaliation. At the show cause hearing in the District Court, counsel for appellants asserted that the Commission subpoenas were issued in retaliation for two law suits brought by CTEL and the USLP aaginst the Commission. He specifically alleged that "counsel for the . . . Commission has stated as such that if we hadn't brought those actions that they wouldn't have taken actions against the United States Labor Party and the Committee to Elect Lyndon La Rouche." A. 84-85. The District Court, denying appellants' request for "leave to file a written statement within 10 days," later concluded "there is no indication that these subpoenas are part of a scheme to harass respondents." A. 111.

Appellants do not challenge directly the District Court's finding of no harassment inasmuch as they concede that their allegations in this regard were unsubstantiated. Instead, they urge us to conclude that the District Court afforded them an inadequate opportunity to substantiate their allegations that the subpoenas were issued for purposes of harassment and retaliation.

It is well settled that an agency may not use its subpoena power "for an improper purpose, such as to harass the [subpoenaed party] or to put pressure on [it] to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *United States v. Powell*, 379 U.S. 48, 58 (1964); *accord United States v. Bisceglia*, 420 U.S. 141, 146 (1975). It is equally well settled that the burden of showing an improper purpose is on the subpoenaed party, *United States v. Powell*, *supra*, 379 U.S. at 58.

In cases involving the enforcement of IRS summonses, several courts have held that, where a summonee raises

colorable allegations of an improper purpose and seeks to prove those allegations, the enforcement court must afford the summonee at least some opportunity to substantiate its allegations. *United States v. Church of Scientology*, 520 F.2d 818, 822-25 (9th Cir. 1975); *United States v. McCarthy*, 514 F.2d 368, 372-375 (3d Cir. 1975); *United States v. Salter*, 432 F.2d 697, 699-701 (1st Cir. 1970). To rule otherwise, these courts have noted, would render it virtually impossible for a summonee to prove that a facially valid summons was, in fact, issued for an improper purpose. But, in recognition of the potential for delay and burdensomeness to the IRS, these courts have not afforded the summonee with the right to full-blown discovery. Instead, they have held that, as an initial matter, the summonee is entitled only to a preenforcement evidentiary hearing limited to the question whether the summons was issued for a proper purpose.

Relying principally upon these IRS cases, appellants assert that the District Court, by denying their request to file "written materials," failed to provide them with an adequate opportunity to substantiate their allegations of harassment and retaliation on the part of the Commission. This argument, we think, is without merit. It is our view that inasmuch as the record reveals that appellants in fact never sought to avail themselves of an opportunity to substantiate their allegations, they cannot now be heard to complain about the loss of that opportunity.

Turning to the record, we find that appellants first raised the issue of harassment and retaliation not in the papers they filed before the show cause hearing in the District Court, but rather at the hearing itself. There counsel for appellants, in an unsworn statement, asserted that the subpoenas were issued in response to two suits filed by CTEL and the USLP against the Commission and that counsel for the Commission "has stated as such" that the Commission was acting in retaliation to

those suits. Then, after discussing the burdensomeness of the subpoenas, counsel for appellants concluded his argument with the following request: "I would like to add, Your Honor, that we consider this a very significant case, and would like leave to file a written statement within 10 days." A. 89. The District Court, after hearing rebuttal argument, rejected appellants' request, noting "I think I will rule on the papers." A. 103.

We read the record as indicating that appellants never requested the District Court to provide them with an opportunity to substantiate their allegations of harassment and retaliation. To be sure, appellants sought permission to submit a "written statement" in connection with their case. But we regard this request, especially since it was not addressed to any one claim in particular, as a request not to substantiate appellants' allegations of harassment and retaliation, but rather to brief all the grounds upon which appellants resisted enforcement. Surely, in a summary enforcement proceeding for which appellants had at least two weeks actual notice, the District Court is not to be faulted for denying a request for additional briefing time.[20]

[20] In this regard, counsel for appellants argues that he had virtually no time to prepare for the show cause hearing inasmuch as appellants were served, and he was retained, only one day before the hearing. But the record reveals that appellants were served with the subpoenas months before the show cause hearing and that they were notified by counsel of the show cause order two weeks before the hearing date when counsel was served. The fact that appellants retained counsel to represent them at the show cause hearing only one day before the hearing does not detract from the fact that appellants had actual notice of the hearing date two weeks earlier. Accordingly, we agree with the conculsion of the District Court that appellants "cannot reasonably argue that they lacked adequate time to prepare their defense for the hearing." A. 108.

Nor do we read the IRS cases as suggesting to the contrary. Those cases seek to provide a summonee who has raised colorable allegations of an improper purpose underlying a summons with an opportunity *as an evidentiary matter* to substantiate those allegations. In the instant case, appellants' request to submit a written statement was not directed at establishing the truth of their allegations of harassment and retaliation, but rather at informing the District Court of what appellants regarded as the legal consequences of their unsubstantiated allegations. Appellants' reliance on the IRS cases is thus misplaced.

Appellants cannot argue that they improperly were *denied* an opportunity to substantiate their claims when they never *requested* such an opportunity. In the IRS cases upon which appellants rely, the summonees all requested either discovery or an evidentiary hearing to substantiate their claim that a summons had been issued for an improper purpose. Similarly, in the instant case, appellants could have resolved the issue of improper purpose simply by requesting the District Court to conduct a limited evidentiary hearing. This could have been accomplished at the show cause hearing itself through the testimony of counsel for the Commission who allegedly had represented to appellants that the subpoenas were issued in retaliation to the suits brought by CTEL and the USLP.

Appellants, however, requested neither discovery nor an evidentiary hearing, and we deem that failure to constitute a waiver.[21] It surely is not the obligation of the Dis-

[21] Our conclusion that appellants waived their right to substantiate their claims of harassment and retaliation is not, we think, inconsistent with two other cases, United States v. Church of Scientology, *supra*, 520 F.2d at 825; United States v. McCarthy, *supra*, 514 F.2d at 376-77, where courts declined to imply a waiver of the right to a preenforcement evidentiary hearing. In those cases, which involved IRS summonees who had requested discovery rather than a preenforcement evidentiary hearing, the courts concluded that it would be unduly harsh to imply a waiver of the right to such a hearing. In the instant case, however, appellants requested neither discovery, an evidentiary hearing, nor any other legal mechanism to substantiate their factual allegations of harassment and retaliation. It is not unduly harsh, we think, to imply a waiver under the circumstances presented here.

trict Court *sua sponte* to conduct a preenforcement evidentiary hearing whenever counsel orally suggests an improper purpose. The subpoenaed party must request such a hearing, and, if it fails to do so, the District Court must proceed on the record before it. Accordingly, we conclude that, inasmuch as appellants never requested an opportunity to substantiate their allegations of harassment and retaliation, they waived their right to such an opportunity.

III

It is our view, in sum, that (1) inasmuch as the District of Columbia was a place where the Commission's "inquiry [was] carried on" within the meaning of section 437d(b), the District Court had subject matter jurisdiction to entertain this enforcement petition, (2) insofar as section 437d(b) authorizes extraterritorial service of process, appellants were properly served in New York, and (3) inasmuch as appellants never requested an opportunity to substantiate their allegations of harassment and retaliation, they waived their right to such an opportunity. Accordingly, we affirm the decision under review.

It is so ordered.

Supreme Court, U. S.
FILED
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No. 79-800

In the Supreme Court of the United States

OCTOBER TERM, 1979

COMMITTEE TO ELECT LYNDON LAROUCHE, ET AL.,
PETITIONERS,
v.
FEDERAL ELECTION COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, Federal Election Commission (the Commission), requests that the petition for writ of certiorari by petitioners, Committee to Elect Lyndon LaRouche (CTEL or the Committee), National Caucus of Labor Committees (NCLC), Campaign Publications, Inc. (Campaign), and New Solidarity International Press Service (New Solidarity), to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case be denied.

OPINION BELOW

The opinion of the court of appeals, which is reported at Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9090, appears in the appendix of the petition at 41a.

JURISDICTION

The jurisdictional requisites are set forth in the petition. *See also* 2 U.S.C. § 437d(a)(6).

QUESTION PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit properly upheld the district court's enforcement of the subpoenas issued by the Commission in this case.

STATUTES INVOLVED

The relevant statutory and constitutional provisions are set forth in the petition at 2.

STATEMENT OF THE CASE

The subpoenas sought to be enforced in this case were issued in connection with an investigation by the Commission of possible violations of the Federal Election Campaign Act (FECA or the Act).[1] Letters notifying USLP, CTEL, NCLC, New Solidarity, and Campaign of the Commission's findings of possible violations had been sent to each organization on May 13, 1977 and again on June 9, 1977. Thereafter, by letters dated June 11 and 13, 1977, local Washington counsel notified the Commission that they had been retained to represent the organizations. On June 24, 1977, the Commission, pursuant to 2 U.S.C. § 437d(a)(3), subpoenaed the organizations to produce at their New York offices, specified documents pertaining to their expenditures, contributions, and lease and loan agreements.

On July 8, 1977, when Commission staff members went to New York to examine the subpoenaed documents, representatives of the five organizations and their counsel indicated that the materials were not yet assembled. Counsel for the Commission nonetheless reviewed the subpoenas and attachments with the representatives and their counsel. At this meeting, New York counsel stipulated to produce the documents on July 20, 1977; counsel for the Commission agreed to return to New York on that date. On July 19, however, the Commission was notified that the organizations would not comply.

On August 23, 1977, the Commission petitioned the United States District Court for the District of Columbia for enforcement of the subpoenas pursuant to 2 U.S.C. § 437d(b). A show cause order was issued, requiring the organizations to appear September 8, 1977.

On September 7, 1977, Washington counsel filed a motion to dismiss the petition on grounds of (1)

[1] The Commission, on May 11, 1977, found reason to believe that NCLC had violated 2 U.S.C. §§ 433, 434, 441a by failing to register as a political committee affiliated with CTEL and USLP and to file disclosure reports with the Commission and by making in-kind contributions to CTEL and USLP in excess of the contribution limits of the Act. The Commission also found reason to believe that New Solidarity and Campaign had violated 2 U.S.C. § 441b(a) by making corporate contributions to CTEL and USLP, and that both USLP and CTEL had violated 2 U.S.C. § 433(b)(2) by failing to report affiliation with each other and NCLC.

lack of subject matter jurisdiction; (2) insufficiency of service; and (3) lack of adequate time to prepare a defense to the subpoenas' enforcement. At the hearing, local counsel also alleged that the subpoenas were issued as harassment and retaliation. At the conclusion of his argument, local counsel requested leave to file a "written statement" within 10 days. The district court rejected counsel's request.

On September 26, 1977, the district court issued a Memorandum Order concluding that it had subject matter jurisdiction because the Commission's inquiry was being conducted in the District of Columbia. The district court also held that, except for the USLP, all of the organizations had been properly served, and had been afforded adequate time to prepare their defense. It further rejected the claim that the subpoenas were issued for the purpose of harassment or retaliation. Accordingly, the district court ordered CTEL, NCLC, New Solidarity, and Campaign to comply with the Commission's subpoenas.

The order of the district court was appealed to the United States Court of Appeals for the District of Columbia Circuit and affirmed. Petitioners now seek review by this Court of that decision.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners raise only issues of statutory construction, on which there is no conflict in the circuits. Further review by this Court is not warranted.

1. The court below correctly decided that the inquiry

at issue was carried on in the District of Columbia, and that the district court had subject matter jurisdiction to entertain the suit.[2] 2 U.S.C. § 437d(b), the jurisdictional provision for enforcement of Commission subpoenas, provides:

> Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Noting that it was the first court, other than the district court, to define the scope of § 437d(b), the court of appeals analogized to similar jurisdictional provisions in other agency statutes. After exhaustive review of case law interpreting similar statutes, Pet. App. at 50a–55a, the court properly concluded that such case law provided "an appropriate guide in our task of determining where the Commission's 'inquiry [was] carried on' within the meaning of section 437d(b)." Pet. App. at 55a.

Accordingly, applying a two-prong test, the court of appeals determined that the District of Columbia

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[2] Petitioners had also alleged below that the court was without personal jurisdiction because 2 U.S.C. § 437d(b) did not authorize extraterritorial service of process and petitioners had been served in New York. The court rejected this argument. Pet. App. at 58a–66a. The petition does not raise this issue.

was a place[3] in which the Commission's inquiry was conducted. The court found the nexus in the fact that this jurisdiction was where the Commission maintains its headquarters, where the Commission authorized the auditing of CTEL records and the interviewing of contributors, where the Commission determined that there was reason to believe that petitioners may have violated various federal election laws, where all correspondence regarding possible violations emanated, and where the subpoenas were in fact issued.[4] Moreover, the court of appeals stated:

> We also regard it as significant, though not surprising, that appellants, when first notified by letter that they were under investigation, retained local counsel in the District of Columbia. That appellants retained local counsel before hiring New York counsel, and long before this enforcement petition was filed, strongly suggests that appellants themselves recognized that the District of Columbia was the important situs of the investigation.

Pet. App. at 56a.

2. The court of appeals also correctly found that the choice of the District of Columbia as a jurisdiction in which the subpoenas could be enforced was not beyond the "bound of reasonableness." Taking into account a

[3] The court stated that "[t]o say that the Commission's inquiry was being carried on in the District of Columbia is not to say that it was not also being carried on in New York." Pet. App. at 58a n.9. Rather the court found the Commission's investigation to be national in scope. Thus, the court found *FTC* v. *Western General Dairies, Inc.*, 432 F. Supp. 31 (N.D. Cal. 1977) inapposite and petitioners' reliance thereon misplaced. Pet. App. at 57a n.8.

[4] While the subpoenas were returnable in New York, the court found and the record indicates that "this was done solely for the convenience of appellants." Pet. App. at 56a n.7.

possible chilling effect on associational rights, the court stated:

> In the instant case . . . the record is devoid of any evidence of chill resulting from the fact that the subpoenas were enforced in the District of Columbia.

Pet. App. at 57a.

3. The court of appeals also correctly upheld the district court's denial of petitioners' request to file a "written statement." Pet. App. at 69a. Petitioners attempted to convince the court of appeals that this request had actually been a request for discovery or for a hearing on their oral allegation of harassment. However, the court of appeals correctly concluded, on the basis of the record, that "[i]t surely is not the obligation of the district court *sua sponte* to conduct a preenforcement evidentiary hearing whenever counsel orally suggests an improper purpose." Pet. App. at 70a–71a.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 1980

[5] Although the petitioners argue that they were afforded insufficient time to prepare for the September 8, 1977, hearing in the district court, local Washington counsel had been retained by petitioners as early as June 11, 1977. Pet. App. at 45a–46a.

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